Nos. 85-1316, 85-1547

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

PULASKI COUNTY SPECIAL SCHOOL DISTRICT NO. 1, *et al.*,
and ARKANSAS STATE BOARD OF EDUCATION, *et al.*,

Petitioners,

VS.

LITTLE ROCK SCHOOL DISTRICT, *et al.*
and LORENE JOSHUA, *et al.*,

Respondents.

CONSOLIDATED BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1) Did the Court of Appeals for the Eighth Circuit properly determine that the district court's findings of segregative violations with significant interdistrict effect were not clearly erroneous?

2) Did the Court of Appeals apply the relevant case law in a manner which is consistent with its own precedent and in harmony with the law of other circuits?

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CONSOLIDATED BRIEF IN OPPOSITION

JURISDICTION

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part, that "[no State shall] deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This interdistrict school desegregation case follows on the heels of efforts to desegregate the Little Rock, Arkansas school district, reported in Aaron v. Cooper and Clark v. Little Rock Board of Education.[1] The plaintiffs are the Little

[1] Aaron v. Cooper, 143 F. Supp. 855 (E.D. Ark. 1956); aff'd 243 F.2d 361 (8th Cir. 1957); Aaron v. Cooper, 2 Race Rel. L. Rep. 934-36, 938-41 (E.D. Ark. 1957), aff'd Thomason v. Cooper, 254 F.2d 808 (8th Cir. 1958); Aaron v. Cooper, 156 F. Supp. 220 (E.D. Ark. 1957), aff'd sub nom. Faubus v. United States, 254 F.2d 797 (8th Cir. 1958); Aaron v. Cooper, 163 F.Supp. 13 (E.D. Ark.), rev'd 257 F.2d 33 (8th Cir.), aff'd sub nom. Cooper v. Aaron, 358 U.S. 1 (1958); Aaron v. Cooper, 261 F.2d 97 (8th Cir. 1958); Aaron v. Cooper, 169 F. Supp. 325 (E.D. Ark. 1959); Aaron v. McKinley, 173 F. Supp. 944 (E.D. Ark. 1959), aff'd sub nom. Faubus v. Aaron, 371 U.S. 197 (1959); Aaron v. Tucker, 186

Rock School District and intervenors Joshua and Knight, et al.[2] The defendants are the Pulaski County Special School District No. 1 (hereinafter PCSSD), the North Little Rock School District (hereinafter NLRSD), and the Arkansas State Board of Education (hereinafter SBE or State Board).[3]

F.Supp. 913 (E. D. Ark. 1960), rev'd Norwood v. Tucker, 287 F.2d 798 (8th Cir. 1961); Clark v. Board of Education of Little Rock, 369 F.2d 661 (8th Cir. 1966); Clark v. Board of Education of Little Rock School Dist., 426 F.2d 1035 (8th Cir. 1970), cert. denied 402 U.S. 952 (1971); Clark v. Board of Education of Little Rock School District, 449 F.2d 493 (8th Cir. 1971), cert. denied 405 U.S. 936 (1971); Clark v. Board of Education of Little Rock School District, 465 F.2d 1044 (8th Cir. 1972), cert. denied 413 U.S. 923 (1973); Clark v. Board of Education of the Little Rock School District, 705 F.2d 265 (8th Cir. 1983).

[2] Knight and Joshua were allowed to intervene at the remedy stage by an Eighth Circuit order reversing the district court's denial of intervention. Joshua, et al. v. Pulaski County Special School District No. 1, et al., 738 F.2d 445 (8th Cir. 1984).

[3] The PCSSD and NLRSD each were the subject of a school desegregation suit. The PCSSD

There are three school districts in Pulaski County: LRSD, PCSSD and NLRSD.[4] LRSD covers 53 square miles and comprises 60% of the City of Little Rock. The population of the area covered by LRSD is 2/3 white; during the 1983-84 school year 70% of LRSD's 19,052 students were black. NLRSD covers 26 square miles and comprises nearly all of the City of North Little Rock. In 1983-84, 36% of NLRSD's 9,051 students were black; 64% were white. PCSSD was created in 1927 and surrounds LRSD and NLRSD. PCSSD covers 755 square miles and contains the portion of the

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litigation, Zinnamon v. Board of Education of the Pulaski County, Arkansas Special School District, No 1, LR-68-C-154, filed in 1968 was settled in 1973. The NLRSD litigation, Davis v. North Little Rock School Board, was last before this Court in 1981 on the school board's petition for certiorari, which was denied. 635 F.2d 730 (8th Cir. 1980), cert. denied 454 U.S. 904 (1981).

[4] Each of the three districts is under court order to desegregate; none has achieved unitary status.

county which is not in LRSD and NLRSD. In 1983-84 PCSSD enrolled 27,839 students, of whom 22% were black and 78% were white.

The State Board's Liability

Prior to 1954 the State of Arkansas mandated segregation in public schools. Ark. Stat. Ann. § 80-509. As they were throughout Arkansas, the black public schools in Pulaski County, i.e., within LRSD, PCSSD and NLRSD, were inferior to the white schools. Moreover, the black ele-mentary schools in PCSSD and NLRSD were inferior to black elementary schools in LRSD, and disparities on the high school level were even more pronounced. Prior to 1954, PCSSD maintained inadequate black schools and operated without an accredited high school for black students. Accordingly, the LRSD was identified as the school district with opportunities for black students, who were drawn there from all over the state and particularly from

other parts of Pulaski County. Some black families moved from the County to Little Rock because of disparities in educational opportunities.

The State of Arkansas was aware of these inequities and their consequences. The state took no remedial action to require adequate facilities outside of LRSD for black students prior to 1954. In fact, when it came to educating black students the State ignored school district boundary lines. Arkansas took no post-Brown steps to dismantle its segregated school systems or to improve the quality of black schools. Post-1954 state actions heightened the identity of the LRSD as a black district and delayed desegregation. Although the LRSD had announced shortly after Brown I that it would begin to desegregate its schools by 1957 and complete the process by 1963, the active intervention of the state was a

central factor in delaying desegregation of the Little Rock schools until 1973, and in contributing to an increasing concentration of blacks in LRSD.

The state took no action to foster racially neutral school siting; it approved segregative siting as late as 1980. In 1953 the state enacted legislation authorizing the segregative transfer of a housing project site, Granite Mountain, specifically designated for blacks, from PCSSD to LRSD. This transfer further identified the LRSD as the school district in Pulaski County with primary responsibility for educating blacks. The State of Arkansas has never acknowledged its affirmative duty to assist local school boards in their desegregation efforts and has never promulgated any rules or guidelines which

would encourage local school districts to eliminate discrimination within their school systems.

PCSSD's Liability

PCSSD participated in and was liable for the pre-1954 violations ascribed to the State Board, and shares responsibility for the manner in which the dual interdistrict system of education concentrated blacks in LRSD. The courts below ruled that PCSSD committed a number of post-Brown segregative actions which had significant interdistrict effects. PCSSD accepted students from LRSD when the latter closed its schools during the 1958 school year to avoid desegregation. Significant numbers of interdistrict transfers continued until the mid-1960's.

The historic intention was that the boundaries of the cities of North Little Rock and Little Rock would remain coterminous with their respective school

districts. Until the late 1960's as the City of Little Rock grew, LRSD grew. After Green v. County School Board, 391 U.S. 430 (1968) made school desegregation more likely, LRSD no longer annexed land so as to remain coterminous with the city of Little Rock.

By 1984 the City of Little Rock encompassed 91 square miles while LRSD covered 53 square miles. Areas annexed to the City of Little Rock but part of PCSSD are residential areas in which many white families lived or moved. As a result, their children now attend PCSSD schools. If the boundaries of the City of Little Rock and its school district had remained coterminous the black-white ratio in LRSD schools would now be sixty-forty rather than seventy-thirty. The courts below found that PCSSD's acts of freezing its boundaries to discontinue the practice of allowing the City of Little Rock and LRSD

boundaries to remain coterminous spring from unconstitutional racial motives that have significant interdistrict effects on LRSD.

The 1973 Zinnamon decree set forth PCSSD's desegregation responsibilities. PCSSD has not complied with the terms of the decree in a number of significant respects. PCSSD failed to meet goals for hiring and promotion of black principals, teachers and administrators. After 1973 PCSSD closed schools in black neighborhoods and built new schools in distant white neighborhoods. Many of the new schools were over 90% white. There has been no new construction in black areas of the county. The Eighth Circuit affirmed the district court's conclusion that PCSSD's violation of the Zinnamon order directing the district to stop building

schools in a segregative manner has had substantial and continuing intra-and inter-district effects.

The chances that a black student in PCSSD will be classified as mentally retarded are significantly greater in PCSSD than in LRSD. The burdens of transportation fall inequitably on black PCSSD students. Student assignments continue to be made on a discriminatory basis. In 1983 PCSSD bused black students to black schools rather than to available white schools. Of fifty-one schools in PCSSD, sixteen were racially identifiable as black schools and thirteen were racially identifiable as white schools. The Eighth Circuit ruled that PCSSD's failure to comply with requirements of the Zinnamon decree which would have provided input of the PCSSD black community on school sites selection and housing project decisions exacerbated the historical trend

of black in-migration to LRSD and white out-migration to PCSSD. The district court further concluded that PCSSD and LRSD boundaries have been maintained to keep LRSD predominantly black and PCSSD predominantly white and that these manipulations and other violations had substantial interdistrict effect. The Eighth Circuit ruled that these findings were not clearly erroneous.

The Court of Appeals Decision

On appeal, the Eighth Circuit held that the district court's findings on liability were not clearly erroneous and that intra- and inter-district relief was appropriate. The Court of Appeals ruled that the district court's conclusion that consolidation was the only viable remedy was clearly erroneous and remanded remedial issues for further hearings on school district boundary line adjustments or some other effective alternative which

would remedy the proven violations. The court ordered additional relief, including improving the quality of education in any remaining all-black schools in LRSD, provision of compensatory and remedial programs for black children in all three school districts, magnet schools and programs, and the State Board's participation in funding remedial and quality education programs.

REASONS FOR DENYING THE WRIT

PCSSD and the State's petitions for a writ of certiorari should be denied. Two courts below concluded that the evidence established that defendants' segregative violations have had significant interdistrict effect. The Eighth Circuit correctly ruled that the district court's findings in this regard were not clearly erroneous and thus, under Anderson v. City of Bessemer, 84 L.Ed.2d 518 (1985) and Pullman-Standard v. Swint, 456 U.S. 273,

276-90 (1982), cannot be reversed. The district court made specific findings on interdistrict effects of the actions of PCSSD and the other defendants; these findings were scrutinized by the Eighth Circuit which ruled that they were not clearly erroneous.

The Eighth Circuit order to revise the boundaries between PCSSD and LRSD is predicated on a close review of all of the evidence before it. The Eighth Circuit modified the district court's remedial order and provided for a less intrusive remedy with respect to district boundary lines, which is tailored to address the effects of specific violation found. Moreover, PCSSD's certiorari petition presents issues to this Court which arguably are not ripe for adjudication. The Eighth Circuit's order directs the district court to hold a hearing before adjusting the boundaries between PCSSD and

LRSD. The nature and scope of the remedy cannot be determined until that hearing is held.[5]

The State's liability as "a primary constitutional violator" is well established. Under the relevant Eighth Circuit precedent and in harmony with the applicable law of other circuits the district court's remedy, as modified, is necessary and appropriate.

Milliken v. Bradley, 418 U.S. 717 (1974) establishes the conditions under which a district court may order interdistrict relief. The Eighth Circuit, sitting en banc, applied Milliken's standards in a manner consistent with its own precedent and with the law of other circuits. "Before the boundaries of separate and autonomous districts can be

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[5] As of the submission of this brief that hearing has not been held. The appellate court's order leaves open the possibility that no boundary adjustments will be made.

set aside" there must be proof of "racially discriminatory acts" within one district that produce a "significant segregative effect" in another district. 418 U.S. at 744-45. The Eighth Circuit upheld numerous factual findings by the district court which fell within the parameters of the proof required by Milliken. The appellate court found that the district court's findings on liability were not clearly erroneous.

1. In its petition for certiorari, PCSSD ignores crucial grounds for the Court of Appeals affirmance of the district court's liability findings and miscasts the nature of other findings. The Eighth Circuit opinion delineates a number of violations committed by PCSSD before and after Brown I. The former include PCSSD's failure, coupled with the State's, to provide adequate education for black students even during the de jure period.

The court of appeals noted that"[o]f particular importance to this case [was the fact that] the black elementary schools in [PCSSD] were inferior to the black elementary schools in LRSD." A-13. With the "even more pronounced" disparities at the high school level and PCSSD's failure even as of the mid-1950's to provide a fully accredited high school for black students, these violations identified LRSD "as the district in the state which provided educational opportunities for black students." Id. The Court of Appeals stated that "[t]his identification tended to draw black students to LRSD from all over the state, and particularly from Pulaski County." The two courts below both credited state-commissioned studies concluding that disparities between educational opportunities in school districts "were prominent among the factors that drew black families to Little

Rock from the county and the rest of the state." A13-14. The Eighth Circuit cited the district court:

> It cannot seriously be denied that the Little Rock School District's maintenance of the only North Central accredited high school in the County and indeed in the entire area led to a concentration of blacks in this district. For almost half a century it has not only assumed the burden of giving a quality education to blacks in the County and from far corners of the state but has also been the object of racially motivated attacks by certain political and cultural groups. 514 F. Supp. 330.

This finding alone, which the Court of Appeals ruled was not clearly erroneous, establishes an unconstitutional segregative interdistrict violation on the part of PCSSD and the State Board (through the State) which created their affirmative duty to dismantle the dual system "root and branch". Green v. County School Board, 391 U.S. 430 at 437-38 (1968). That duty remains unsatisfied.

Two courts below found that PCSSD involvement with segregative interdistrict transfers in the late 1950's and early 1960's were part of a scheme in which local and state school board officials ignored school district boundary lines in order to maintain segregation. The appellate court, after reviewing the record in its entirety, concluded that "[t]he district court's finding that specific discriminatory actions by the defendants had a substantial and continuing effect on the racial composition of LRSD is supported by general and school population statistics."[6] A-23. This Court

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[6] The court of appeals cited demographic data "generally contrary to statewide trends in Arkansas [which tended] to support plaintiffs' theory that state-created racial turmoil in LRSD in the 1950's fostered substantial white flight from LRSD to PCSSD and NLRSD. A-23, n.8. This scenario falls directly within the parameters of Milliken's requirement of proof of "racially discriminatory acts" within one district that produce and "significant segregative effect" in another district". 418 U.S. at 744-45.

has stated that a reviewing court cannot substitute its interpretation of the evidence to reach a different factual finding if there is any reading of the evidence which supports the district court. Anderson v. City of Bessemer, 84 L.Ed.2d 518 at 528 (1985); Pullman Standard v. Swint, 456 U.S. 273, 287-90 (1982). Two courts below reviewed the evidence and reached the same conclusion; petitioner PCSSD's dissatisfaction with that reading does not justify denying deference to the fact finding court.

2. PCSSD asserts that its failure to comply with its intradistrict desegregation decree (Zinnamon) has no interdistrict effects and that the court of appeals did not find these derelictions to be intentional. The Zinnamon decree specifically requires PCSSD to take certain actions and avoid others. PCSSD

cannot legitimately claim that flagrant violations of the decree are unintentional. The decree enjoined discriminatory construction plans; nonethless the courts below found that PCSSD violated that provision of Zinnamon and Swann's admonition against the location of new schools "in the area of white suburban expansion, farthest from the Negro population center." Swann v. Charlotte-Mecklenburg Bd. of Ed., 402 U.S. 1 at 20-21 (1971). Having been made aware of its responsibilities by court order, PCSSD cannot argue that its subsequent failure to comply was not intentional discrimination. "Adherence to a particular policy or practice, 'with full knowledge of the predictable effects of such adherence on racial imbalance in a school system is one factor among many others which may be considered by a court in determining whether an inference of segregative intent

should be drawn.'" Columbus Board of Education v. Penick, 443 U.S. 449, 465 (1979). Moreover, two courts below concluded that "there were substantial and continuing inter- and intra-district effects from PCSSD's violation of Zinnamon's specific order that PCSSD must cease and desist now and in the future from building schools in sites which are not equally accessible to blacks and whites." A-31, 584 F. Supp. at 346.

PCSSD asserts that "there are no factual findings (and no evidence in the record) to establish any casual connection between ... intradistrict violations and the increasing proportion of black students in the Little Rock School District". PCSSD Petition at 10. PCSSD blithely ignores, by way of example, evidence such as that cited by the court of appeals.

> The district court credited the testimony of Dr. Charles Willie, Professor of Education and Urban Studies at the Harvard Graduate School of Education, that the various intentionally discriminatory actions of the defendant outlined in this opinion contributed to the disproportionate movement of whites into PCSSD instead of LRSD. 584 F. Supp. at 347. He testified that, among other factors ... PCSSD's numerous violations of the Zinnamon decree (including school site locations) were of significance.

A-45-46.

Petitioner PCSSD attempts to wish away the evidence and then assert that the district court's findings, affirmed by the court of appeals, have no support in the record.

3. PCSSD concedes that "the findings and evidence clearly demonstrated the existence of segregatory location of housing projects within the City of Little Rock," but contends that the only housing decision with interdistrict effects was the Granite Mountain housing project.

PCSSD Petition at 11. The evidence shows that the state concentrated public housing in LRSD, even though the Little Rock and North Little Rock housing authorities had authority to construct housing ten miles beyond city limits, i.e., in PCSSD. As for PCSSD's claim that "there was no finding, and no evidence that the failure to build public housing in the county was the result of any racially discriminatory purpose on the part of the housing authorities themselves or of any person, private or official, in the suburban areas" (PCSSD Petition at 11), the Court of Appeals noted that "[t]he district court found that [segregative clearance and relocation practices] were part of 'a deliberate policy of the Little Rock Housing Authority and other governmental bodies to maintain a residential racial segregation.'" A-37, 584 F. Supp. at 342. "PCSSD also contributed to the segregated

nature of the private housing market through its decisions in school sitings." A-37. The Court of Appeals quoted Chief Justice Burger in Swann: "People gravitate toward school facilities, just as schools are located in response to the needs of people. The location of schools may thus influence the pattern of residential development of a metropolitan area and have important impact on the composition of inner city neighborhoods." 402 U.S. 1 at 20.[7] Again, petitioner PCSSD's distortion of the nature of the record below does not justify review by this Court.

4. Petitioner PCSSD argues that no factual support exists for a finding of "freezing" or "manipulation" of school district boundaries. The Court of Appeals

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[7] The Court of Appeals cited two specific fact findings in the district court's opinion, Findings of Fact 36 and 37, which leave no doubt about the interdistrict nature of the segregative housing violation. See A-38.

ruled that the district court's findings that boundaries between PCSSD and LRSD had been maintained to keep LRSD predominantly black and PCSSD predominantly white and that these boundary manipulations have had a substantial interdistrict segregative effect were not clearly erroneous.[8] A-28.

The conclusions of the court below are not in conflict with the law in other circuits. Goldsboro City Bd. of Ed. v. Wayne City, Bd. of Ed., 745 F.2d 324 (4th Cir. 1984) involved a school district which had been declared unitary and which was not tainted by violations of prior

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[8] The court cited the expert testimony of Dr. Robert Dentler, who concluded that in 1968 PCSSD and LRSD ceased consolidation efforts. Findings of Fact Nos. 7-26 in the district court opinion support the general finding that discriminatory racial intent infected consolidation decisions. The district court concluded that "[t]he refusal of the Pulaski County Special School District, with its long history of deannexation and support of consolidation, allow this court to infer that race is a factor in its decision to energetically oppose interdistrict relief." A-111.

court orders or the segregative action of housing market actors. Similarly, Lee v. Lee County Bd. of Education, 639 F.2d 1243 (5th Cir. 1981) does not dictate a different result. In Lee the Fifth Circuit ruled that the district court's finding that the interdistrict violations were neither significant nor continuing was not clearly erroneous. Here the district court decided otherwise and that finding has been upheld because it is not clearly erroneous. Thus, there is no conflict with Lee. The Eighth Circuit's conclusions do not, contrary to PCSSD's claim, require a school district to remedy mere racial imbalance between adjacent school districts. To the contrary, they are supported by factual findings which require an appropriate remedy.

5. The court of appeals' imposition of remedial responsibilities upon the state which will require an expenditure of funds

follows the law of the Eighth Circuit and does not conflict with that of others. In Milliken II, 433 U.S. 267 (1977) this Court acknowledged that remedying the effects of state-imposed segregation may require an incidental expenditure of funds for compensatory and remedial programs. In the St. Louis school desegregation suit the Eighth Circuit ordered the state of Missouri to pay one-half the cost of the construction or rehabilitation necessary to house a magnet school program and the full cost of transporting students who enrolled. See Liddell v. State of Missouri, 731 F.2d 1291 at 1309-12 (1984).[9] These remedial responsibilities imposed

[9] As the court of appeals correctly observed, the imposition of such responsibilities upon the state in Liddell was based upon an intra-district violation. Thus, this remedial element does not require proof of inter-district violation and could be ordered upon proof of a much less extensive violation than that found here.

upon the state do not conflict with the law of other circuits; they raise no issues worthy of review by this Court. See Evans v. Buchanan, 582 F.2d 750 (3rd Cir. 1978)(en banc).

The State Board argues that the requisite causal relationships between the violation and present conditions in LRSD does not exist. The State Board ignores its status as a "primary constitutional wrongdoer" whose actions had significant interdistrict effects. Moreover, the State's segregative actions through local housing authorities further impose the responsibility to eliminate the inter-district effects of its violation.

CONCLUSION

For the reasons stated above, the petitions for certiorari should be denied.

Respectfully submitted,

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